IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.6.2006

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.No.547 of 1999
& C.M.P.Nos.6541 and 16258 of 1999

1. Srivatsa Tube Corporation,
No.8/2, Mettuppalayam Road,
Coimbatore 43.

2. New India Assurance Company,
No.188/189, D.B.Road,
R.S.Puram, Coimbatore-2. .. Appellants
(Respondents)

vs.

1. K.Latha
2. K.Senthilkumar, minor,
(minor represented by
mother, next friend and guardian K.Latha)
3. V.Subramanian
4. Suvarnakumari .. Respondents
(Petitioners)

Civil Miscellaneous Appeal against the award and decree dated 30.7.1998 in M.C.O.P.No.342 of 1990 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Tindivanam.

For appellants : Mr.S.Manohar
For respondents : Mr.B.Rajendran
for M/S.M.Sriram and D.Rajendran

JUDGMENT

The appeal is against the award and decree dated dated 30.7.1998 in M.C.O.P.No.342 of 1990 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Tindivanam. The owner of the lorry and the Insurance Company are the appellants herein. Respondents 1 to 4 herein are the claimants before the Tribunal.

2. The deceased was driver of the Police vehicle and the claimants are the legal heirs. The accident took place on 17.6.1990 at 5.15 a.m. at the place 8 km from Tindivanam on the Trichy-Madras National Highway. At the time of the accident, the lorry belonging to the first appellant, driven by its driver, dashed against the Police Jeep, thereby the driver of the Police Jeep sustained injuries and he died on the spot. Along with the deceased, another passenger of the vehicle also expired. According to the claim petition, the accident happened due to rash and

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negligent driving of the driver of the first appellant and consequently, the claim petition was filed seeking a consolidated sum of Rs.5,00,000/- as compensation.

3. The Insurance Company resisted the claim along with the owner of the lorry.

4. On behalf of the claimants, P.W.1, the wife of the deceased and P.W.2, the eye-witness were examined and filed Ex.P-1 death certificate, Ex.P-2 driving licence, Ex.P-3 legal heir certificate, Ex.P-4 S.S.L.C. book, Ex.P-5 transfer certificate, Ex.P-6 death certificate, Ex.P-7 salary certificate, Ex.P-8 rough sketch of the accident-site, Ex.P-9 post-mortem report, Ex.P-10 Motor Vehicle Inspector's report, Ex.P-11 F.I.R. and Ex.P-12 certificate issued by the Police to one Kumar for taking the Police vehicle. No document has been filed on behalf of the Insurance Company or the owner of the vehicle and no witness examined.

5. The Tribunal, relying on the evidence of eye-witness and the various documents referred to above, fixed the liability on the driver of the lorry and consequently, the Insurance Company also was made liable. This is not disputed in the Appeal.

6. As regards the quantum, the Tribunal, taking into consideration the age of the deceased at 28 years at the time of the accident and the income of the deceased at Rs.1,255/- p.m. and the other documents referred to above, fixed the annual income of the deceased at Rs.15,060/-. The Tribunal however adopted the multiplier '25' and determined the amount at Rs.3,76,500/-. The Tribunal thereafter deducted one-third towards personal expenses amounting to Rs.1,25,500/- and determined the amount of compensation payable to the claimants at Rs.2,51,000/- under the head 'loss of income'.

7. The Tribunal awarded a sum of Rs.10,000/- towards loss of consortium, Rs.15,000/- towards loss of love and affection and Rs.2,000/- towards funeral expenses. In all, a sum of Rs.2,78,000/- was granted as compensation with interest at 15% per annum.

8. The present appeal is filed by the owner of the vehicle and the Insurance Company challenging that portion of the order of the Tribunal wherein the multiplier '25' was adopted and the interest at 15% per annum was awarded. According to the appellants, it is contrary to Schedule-II of the Motor Vehicles Act and various pronouncements of the Supreme Court and that the interest granted is also on the higher side, which is also contrary to law.

9. Learned counsel for the Insurance Company would rely upon Schedule-II of the Motor Vehicles Act and the decision of the Supreme Court reported in 1996 A.C.J. 831 (U.P. State Road Transport Corporation and others vs. Trilok Chandra and others)

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and would submit that in any event, the multiplier should not have exceeded '18'. As regards the interest, learned counsel for the Insurance Company would rely upon the decision of the Supreme Court reported in 2005 (3) C.T.C. 373 (Tamil Nadu State Transport Corporation vs. S.Rajapriya) and state that the rate of interest should be 7.5%.

10. Learned counsel for the respondents-claimants would submit that the accident happened in the year 1990, the Tribunal passed the award in the year 1998 considering the age of the deceased who was 28 years at the time of accident and also the fact that in the claim petition, only the basic pay was indicated without showing the other emoluments like H.R.A., C.C.A, etc. and other benefits that would normally be payable to Government servants. The quantum of compensation is low by any standard and therefore, the award should not be interfered. Further, learned counsel would submit that to do substantial justice, this Court has ample powers to modify the award of the Tribunal and mitigate the indigent circumstances of the family which had lost the breadwinner at the early age and therefore, the interest of 15% granted should not be interfered with.

11. There is no doubt that the multiplier adopted by the Tribunal is not in accordance with the Schedule-II of the Motor Vehicles Act and the decision of the Apex Court reported in 1996 ACJ 831 (cited supra) referred by the counsel for the appellants. Therefore, taking into consideration the above submissions of the learned counsel for the appellants and the learned counsel for the respondents-claimants and also the income of the deceased, the compensation payable under the head "loss of income" is fixed at Rs.1,80,720/- by adopting the multiplier '18' on the basis of the income of the deceased at Rs.1,255/- p.m. after deducting one-third towards his personal expenses. (Rs.1,255 x 12 = Rs.15,060/-; Rs.15,060 x 18 = Rs.2,71,080/-; Rs.2,71,080 x 1/3 = Rs.90,360; Rs.2,71,080 - 90,360 = Rs.1,80,720/-).

12. It is worthwhile to refer to paragraph 6 of the judgment of a Division Bench of this Court reported in 2004 ACJ 1086 (Pallavan Transport Corporation Ltd. vs. M.Anbumani), which reads as follows:

"6. It is unfortunate that the claimants have not filed cross-objections. But at the same time, it is not as if this Court is helpless and this Court can certainly invoke its powers conferred under Order 41, rule 33 of the Code of Civil Procedure since the court in deciding these matters, should remember that the compensation awarded should not be inadequate, neither should be unreasonable, excessive nor deficient. In this case, this Court is of the view that the compensation that has been fixed by the Tribunal is on the lower side."

13. In the light of the abovesaid Division Bench decision of this Court reported in 2004 ACJ 1086 and taking into consideration that only a sum of Rs.10,000/- has been awarded by the Tribunal towards loss of consortium, this Court feels that though the loss

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cannot be compensated in terms of money, but however, the same should be objective and reasonable and it is not granted as a matter of gratis. Considering the fact that the claimant/wife is not re-married, the loss of consortium is fixed at Rs.30,000/-. For the fourth claimant who is the mother of the deceased and who has lost her son, the amount granted towards loss of love and affection is enhanced to Rs.25,000/-. The amount of Rs.2,000/- awarded by the Tribunal towards funeral expenses is confirmed.

14. As regards the interest awarded by the Tribunal, the same is modified to 12% per annum since the fatal accident occurred in the year 1990.

15. Thus, the award of the Tribunal is modified as follows:

(i)	Loss of income	- Rs.1,80,720/-
(ii)	Loss of consortium to the wife	- Rs.30,000/-
(iii)	Loss of love and affection to the fourth claimant-mother of the deceased	- Rs.25,000/-
(iv)	funeral expenses	- Rs.2,000/-
	Total compensation	Rs.2,37,720/-

Accordingly, the total compensation is fixed at Rs.2,37,720/- (Rupees two lakhs thirty seven thousand seven hundred and twenty only) with interest 12% per annum from the date of the claim petition till the date of deposit. The Insurance Company is entitled to withdraw the excess amount, if any, after paying the claimants. In other respects, the award of the Tribunal stands confirmed.

16. The appeal is disposed of in the above terms. No costs. C.M.Ps. are closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Subordinate Judge,Motor Accidents Claims Tribunal
Tindivanam.

2.The Record Keeper, VR Section, High Court,Madras.

+ one cc to Mr.B.Rajendran, Advocate Sr.No.26054.
+ one cc to Mr.S.Manohar, Advocate Sr.No.25564.

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